

AMENDED IN ASSEMBLY JUNE 18, 2014

AMENDED IN SENATE APRIL 24, 2014

AMENDED IN SENATE APRIL 21, 2014

AMENDED IN SENATE APRIL 2, 2014

SENATE BILL

No. 1251

Introduced by Senator Huff

February 20, 2014

An act to amend Section 7522.02 of the Government Code, relating to public employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

SB 1251, as amended, Huff. California Public Employees' Pension Reform Act of 2013: joint ~~power~~ *powers* authority: employees.

The California Public Employees' Pension Reform Act of 2013 (PEPRA) requires a public retirement system, as defined, to modify its plan or plans to comply with the act and, among other provisions, establishes new retirement formulas that may not be exceeded by a public employer offering a defined benefit pension plan for employees first hired on or after January 1, 2013. PEPRA authorizes individuals who were employed by any public employer before January 1, 2013, and who became employed by a subsequent public employer for the first time on or after January 1, 2013, to be subject to the retirement plan that would have been available to employees of the subsequent employer who were first employed by the subsequent employer on or before December 31, 2012, if the individual was subject to reciprocity, as specified.

Existing law, the Joint Exercise of Powers Act, generally authorizes 2 or more public agencies, by agreement, to jointly exercise any common

power, which may include hiring employees and establishing retirement systems.

This bill would require a joint powers authority formed by one or more public employers, on or after January 1, 2013, to provide employees ~~meeting specified criteria~~ *who are not new members under PEPPRA* with the defined benefit plan or formula that was available to employees of the employer on December 31, ~~2012~~ 2012, *if they are employed by the authority without a break in service of more than 180 days*. This bill would prohibit the formation of a joint powers authority on or after January 1, 2013, in a manner that would exempt a new employee or a new member from the requirements of PEPPRA.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7522.02 of the Government Code is
2 amended to read:
3 7522.02. (a) (1) Notwithstanding any other law, except as
4 provided in this article, on and after January 1, 2013, this article
5 shall apply to all state and local public retirement systems and to
6 their participating employers, including the Public Employees'
7 Retirement System, the State Teachers' Retirement System, the
8 Legislators' Retirement System, the Judges' Retirement System,
9 the Judges' Retirement System II, county and district retirement
10 systems created pursuant to the County Employees Retirement
11 Law of 1937 (*Chapter 3 (commencing with Section 31450) of Part*
12 *3 of Division 4 of Title 3*), independent public retirement systems,
13 and to individual retirement plans offered by public employers.
14 However, this article shall be subject to the Internal Revenue Code
15 and Section 17 of Article XVI of the California Constitution. The
16 administration of the requirements of this article shall comply with
17 applicable provisions of the Internal Revenue Code and the
18 Revenue and Taxation Code.
19 (2) Notwithstanding paragraph (1), this article shall not apply
20 to the entities described in Section 9 of Article IX of, and Sections
21 4 and 5 of Article XI of, the California Constitution, except to the
22 extent that these entities continue to be participating employers in
23 any retirement system governed by state statute. Accordingly, any
24 retirement plan approved before January 1, 2013, by the voters of

1 any entity excluded from coverage by this section shall not be
2 affected by this article.

3 (3) (A) Notwithstanding paragraph (1), this article shall not
4 apply to a public employee whose interests are protected under
5 Section 5333(b) of Title 49 of the United States Code until a federal
6 district court rules that the United States Secretary of Labor, or
7 his or her designee, erred in determining that the application of
8 this article precludes certification under that section, or until
9 January 1, 2015, whichever is sooner.

10 (B) If a federal district court upholds the determination of the
11 United States Secretary of Labor, or his or her designee, that
12 application of this article precludes him or her from providing a
13 certification under Section 5333(b) of Title 49 of the United States
14 Code, this article shall not apply to a public employee specified
15 in subparagraph (A).

16 (4) Notwithstanding paragraph (1), this article shall not apply
17 to a multiemployer plan authorized by Section 302(c)(5) of the
18 *federal* Taft-Hartley Act (29 U.S.C. Sec. 186(c)(5)) if the public
19 employer began participation in that plan prior to January 1, 2013,
20 and the plan is regulated by the *federal* Employee Retirement
21 Income Security Act of 1974 (*Public Law 93-406*).

22 (b) The benefit plan required by this article shall apply to public
23 employees who are new members as defined in Section 7522.04.

24 (c) (1) Individuals who were employed by any public employer
25 before January 1, 2013, and who became employed by a subsequent
26 public employer for the first time on or after January 1, 2013, shall
27 be subject to the retirement plan that would have been available
28 to employees of the subsequent employer who were first employed
29 by the subsequent employer on or before December 31, 2012, if
30 the individual was subject to concurrent membership for which
31 creditable service was performed in the previous six months or
32 reciprocity established under any of the following provisions:

33 (A) Article 5 (commencing with Section 20350) of Chapter 3
34 of Part 3 of Division 5 of Title 2.

35 (B) Chapter 3 (commencing with Section 31450) of Part 3 of
36 Division 4 of Title 3.

37 (C) Any agreement between public retirement systems to provide
38 reciprocity to members of the systems.

39 (D) Section 22115.2 of the Education Code.

1 (2) An individual who was employed before January 1, 2013,
2 and who, without a separation from employment, changed
3 employment positions and became subject to a different defined
4 benefit plan in a different public retirement system offered by his
5 or her employer shall be subject to that defined benefit plan as it
6 would have been available to employees who were first employed
7 on or before December 31, 2012.

8 (d) If a public employer, before January 1, 2013, offers a defined
9 benefit pension plan that provides a defined benefit formula with
10 a lower benefit factor at normal retirement age and results in a
11 lower normal cost than the defined benefit formula required by
12 this article, that employer may continue to offer that defined benefit
13 formula instead of the defined benefit formula required by this
14 article, and shall not be subject to the requirements of Section
15 7522.10 for pensionable compensation subject to that formula.
16 However, if the employer adopts a new defined benefit formula
17 on or after January 1, 2013, that formula must conform to the
18 requirements of this article or must be determined and certified by
19 the retirement system's chief actuary and the retirement board to
20 have no greater risk and no greater cost to the employer than the
21 defined benefit formula required by this article and must be
22 approved by the Legislature. New members of the defined benefit
23 plan may only participate in the lower cost defined benefit formula
24 that was in place before January 1, 2013, or a defined benefit
25 formula that conforms to the requirements of this article or is
26 approved by the Legislature as provided in this subdivision.

27 (e) If a public employer, before January 1, 2013, offers a
28 retirement benefit plan that consists solely of a defined contribution
29 plan, that employer may continue to offer that plan instead of the
30 defined benefit pension plan required by this article. However, if
31 the employer adopts a new defined benefit pension plan or defined
32 benefit formula on or after January 1, 2013, that plan or formula
33 must conform to the requirements of this article or must be
34 determined and certified by the retirement system's chief actuary
35 and the system's board to have no greater risk and no greater cost
36 to the employer than the defined benefit formula required by this
37 article and must be approved by the Legislature. New members of
38 the employer's plan may only participate in the defined
39 contribution plan that was in place before January 1, 2013, or a
40 defined contribution plan or defined benefit formula that conforms

1 to the requirements of this article. This subdivision shall not be
2 construed to prohibit an employer from offering a defined
3 contribution plan on or after January 1, 2013, either with or without
4 a defined benefit plan, whether or not the employer offered a
5 defined contribution plan prior to that date.

6 (f) (1) If one or more public employers, on or after January 1,
7 2013, form a joint powers authority pursuant to the provisions of
8 the Joint Exercise of Powers Act (Article 1 (commencing with
9 Section 6500) of Chapter 5), that joint powers authority shall
10 provide the following employees with the defined benefit plan or
11 formula that would have been available to employees of the
12 employer on December 31, ~~2012~~ 2012, *to any employee of that*
13 *public employer who is not a new member and subsequently is*
14 *employed by the joint powers authority without a break in service*
15 *of more than 180 days.*

16 ~~(A) An employee of that public employer or employers that was~~
17 ~~hired prior to January 1, 2013, and was not subject to the provisions~~
18 ~~of this article, and was subsequently employed by the joint powers~~
19 ~~authority without a break in service of more than 180 days.~~

20 ~~(B) An employee of that public employer or employers that was~~
21 ~~hired on or after January 1, 2013, but would otherwise be exempt~~
22 ~~from this article pursuant to subdivision (c), and was subsequently~~
23 ~~employed by the joint powers authority without a break in service~~
24 ~~of more than 180 days.~~

25 (2) If there was more than one retirement plan or formula in
26 place on December 31, 2012, due to there being more than one
27 employer, then the joint powers authority shall indicate which
28 defined benefit plan or formula shall apply to employees of the
29 authority ~~who are exempt from this article pursuant to this~~
30 ~~subdivision.~~ *meet the conditions of paragraph (1).*

31 (3) The formation of a joint powers authority on or after January
32 1, 2013, shall not act in a manner as to exempt a new employee
33 or a new member, as defined by Section 7522.04, from the
34 requirements of this article. New members may only participate
35 in a defined benefit plan or formula that conforms to the
36 requirements of this article.

37 (g) The Judges' Retirement System and the Judges' Retirement
38 System II shall not be required to adopt the defined benefit formula
39 required by Section 7522.20 or 7522.25 or the compensation
40 limitations defined in Section 7522.10.

1 (h) This article shall not be construed to provide membership
2 in any public retirement system for an individual who would not
3 otherwise be eligible for membership under that system's
4 applicable rules or laws.

5 (i) On and after January 1, 2013, each public retirement system
6 shall modify its plan or plans to comply with the requirements of
7 this article and may adopt regulations or resolutions for this
8 purpose.

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